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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/327,085	06/04/1999	JOSEPH BACH		5016

27460 7590 06/28/2002

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EXAMINER

VIG, NARESH

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 06/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/327,085

Applicant(s)

BACH, JOSEPH

Examiner

Naresh Vig

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 5, 6, 10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 6, 10 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Response to Amendment***

This is with reference to the Applicant's response received on May 13, 2002 to the Office Action mailed on February 13, 2002. Cancellation of claim numbers 3 – 4, 7 – 9 and 11, and, amendments to claims 1 and 10 are acknowledged. There are 6 claims i.e. 1 – 2, 5 – 6, 10 and 12 are pending for examination.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 6, 10 and 12 are rejected under 35 USC <sup>3</sup>102~~3~~ as being unpatentable over August et al. US Patent 6,389,055 in view of Noreen et al. US Patent 5,303, 393.

Regarding claims 1, 2, 5, 6, 10 and 12, August et al. discloses a system and method for initiating a transaction using the wireless capture of information obtained from a video/audio device, and, more particularly from an audio device such as a radio in a car or home premises. The wireless capture device acts as an acoustic data link where encoded data is transmitted from a source to the wireless capture device using sound waves. The wireless capture device includes a microphone for capturing the sound waves (col. 1 line 63 – col. 2 line 4). Also, August et al. states that “an acoustic data capture device can be used in the presence of human voices without compromising the privacy of the human speaker or speakers. When a microphone is an integral part of a wireless capture device, a storage device of the capture device can store the transaction data, while a display, such as an LCD screen, can display at least a portion of the transaction data to a user. The transaction data also can include dialing information for originating a telephone call. The transaction data can also include descriptive information about an advertisement or solicitation that is associated with the audio signal. The capture device can include a portable phone. Means for originating a telephone call can be contained in a personal base station. Transaction data is transferred to the portable base station, which processes the data and originates a telephone call”. (col.2, lines 22 – 38). Data stream may be modulated onto the program material either by the manufacturer of a sound recording, or, at a broadcast transmitter. The program material with the encoded data would be received by an ordinary radio or television, and, only capture device would be specially adapted to receive the data.

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Specific devices that might be used as the device transducing the encoded signal into a perceptible signal include telephones, televisions, radios, VCRs and other devices, a computer or computer peripheral, an ultrasonic radiator in a security system, a node on a wireless LAN, or a node on a wide-area network. The data might be broadcast to the device over conventional copper land lines, fiber optics, a computer network, over-the-air electromagnetic broadcast, satellite communications, or the internet. (col. 5, lines 17 – 35)

In addition, August et al. system and method disclose to modulate the data stream onto the video component of a television signal, using a spread spectrum encoding. Optical sensor detects the video signal, and decoder extracts data stream from the video signal. Digital information can be non-discernibly modulated onto a video signal by adding to the video signal an amplitude shift keyed (ASK) or frequency shift keyed (FSK) carrier signal, and the digital information can later be captured using ASK or FSK decoding. Encoded data can also be modulated onto a television signal and captured by an optical capture device that responds to the picture displayed on the television. (col. 4, lines 13 – 35). Captured data can be routed by microprocessor from memory to a modem and then to a base station interface, so that the information can be communicated to telephone base. Also, captured data can be routed through modem to a cellular telephone, which can initiate a cellular call. A telephone call may be originated using the DIAL function. This function is initiated by activation of button. With this function, dialing information, which is part of the data captured by capture device and now stored in memory, is retrieved. This information is then further processed, so that a

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telephone call can be initiated. In yet other instances, such as when a cellular call is dialed, stored dialing information may be applied to an outgoing number register. "While the DIAL function is used to output certain captured information needed to initiate a telephone call (or other data output function), the SEND DATA function, initiated by activation of button, is used to output other portions of the captured data stored in memory, pertaining, for example, to a transaction that the user desires to make. This additional data is retrieved from memory and appropriately transmitted, depending upon the manner and type of telephone call involved". (col. 10, lines 30 – 64).

August et al. does not disclose storing personal ordering information. However, August et al. discloses that automatic number identification (ANI), caller ID, and other features available in the telecommunications network may be used to provide additional information to the called party. Noreen et al. discloses system and method which allows mobile radio users to diverse audio programming sources and an ability to order products or services offered for sale and directly respond in other ways to solicitations or information provided over the radio channels. (col. 1, lines 12 – 19). The user may place and order by speaking into the microphone, touching the touch screen on a display, pushing a button (for example, the coming might be the signal to order the compact disc). "The user may input credit card number for placing an order, or a user's credit card number may be stored at the processing center" (col. 15, lines 43 – 45). Therefore, it is known at the time of applicant's invention to the person with ordinary skill in the art to store personal ordering information to have the information available when

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the user wants to place the order (avoids customer reentering personal information whenever they place an order).

In addition, August et al. does not disclose establishing communication connection over the computing system. However, August et al. discloses that captured data can be routed by microprocessor from memory to a modem and then to a base station interface, so that the information can be communicated to telephone base. Also, captured data can be routed through modem to a cellular telephone, which can initiate a cellular call. It is inherent that modems connect computer systems over the telephony network to exchange data between them.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. August et al. US Patent 6,389,055 discloses Intergrating Digital Data With Perceptible Signals.
2. Noreen et al. US Patent 5,303,393 discloses Integrated Radio Satellite Response System And Method.
3. Information on "How Modems Work".

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naresh Vig whose telephone number is 703.305.3372. The examiner can normally be reached on M-F 7:30 - 5:00 (Alt Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703.308.2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703.305.7687 for regular communications and 703.305.7687 for After Final communications.

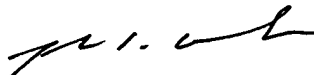


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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.305.3900.

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June 24, 2002

  
John G. Weiss  
Supervisory Patent Examiner  
Group 3200